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CASE NO. 85-137

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

HENRY LAVADO,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Eleventh Circuit

REPLY BRIEF OF PETITIONER

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QUESTIONS PRESENTED FOR REVIEW

Whether the detention of Defendant Henry Lavado by local law enforcement officers for over an hour without conducting any interrogation or request for identification while awaiting the arrival of federal drug enforcement agents amounted to an unlawful arrest; and whether the evidence and statements obtained following the arrival of the federal drug agents and the subsequent arrest of the Defendant were the fruit of an unlawful arrest.

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A1-A20) is reported at 750 F.2d 1527.

JURISDICTION

The judgment of the Court of Appeals for the Eleventh Circuit affirming the Petitioner's conviction was entered on January 24, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254 (1).

POINT I

Argument

Although this petition for certiorari was not filed within the time allowed by the Rules of Court, the time limitation is not jurisdictional and does not serve as a bar to this Court's exercise of discretion to consider this case. Taglianetti v. United States, 349 U.S. 316 (1969).

This Court's discretionary review on certiorari is appropriate in cases involving substantial federal questions reaching constitutional dimensions. Rice v. Sioux City Memorial Park Cemetry, 75 S.Ct. 614, 349 U.S. 70, 99 L.Ed. 897 (1955). The instant case presents such substantial federal questions reaching constitutional dimensions.

The government's reliance on Stone v. Powell, 428 U.S. 465 (1976) is inapposite

to this Court's determination of whether to exercise its power to review this matter on certiorari. Stone v. Powell, supra, involved habeas corpus proceedings wherein the Court held that where a state has provided an opportunity for full and fair litigation of a Fourth Amendment claim, a state prisoner may not be granted federal habeas corpus relief on the grounds that evidence obtained in an unconstitutional search or seizure was introduced at trial.

POINT II

THE LENGTHY DETENTION OF DEFENDANT BY LOCAL OFFICIALS PENDING ARRIVAL OF CUSTOMS AGENTS WAS AN ILLEGAL ARREST

The essence of the government's first argument is that it was proper for the local officers to detain the defendant for

over an hour awaiting the arrival of more knowledgeable customs agents because "the police" were "diligently pursuing a means of investigation that is likely to resolve the matter in a reasonable period of time." However, the record in this case reveals that both the local officials and the customs agents failed to act diligently.

After receiving a telephone call from the director of a Rookery Bay Laboratory, it took the local officials 15 minutes to arrive at the laboratory where the Defendant was located. (Tr. 464). Upon arrival, the local officials simply walked the Defendant outside the laboratory and had him sit down against the building (Tr. 465). They made no attempt to request information about his identity, to place him under arrest or do anything to acti-

vely investigate the alleged crime for which he was being detained. (Tr. 26).

Upon receiving the call from the director of the Rookery Bay Laboratory, the local agents called the federal drug agents who were thirty minutes away. (Tr. 26). Yet, the federal drug agents arrived at the laboratory over an hour later. Hence, from the time that the federal drug agents were first notified of the defendant's location, it took them an hour and fifteen (75 minutes) minutes to make a 30 minute trip. The lengthy delay indicates a lack of diligence by the various law enforcement personnel in pursuing the investigation; therefore, the one hour detention in this case does not comport with the requirements of United States v. Sharpe, _____ U.S. _____, 105 S.Ct. 1568 (1985).

Next, the government contends that there is no causal connection here between the actions of the local officers, even if illegal, and the discovery of the evidence; therefore, the evidence could not be the fruit of an illegal detention. In the instant case, it is clear that the defendant could have physically walked away from the Rookery Bay Laboratory if he were not being detained by the local officials (Tr. 52). Therefore, it is clear that but for the illegal arrest the evidence submitted at trial from the Defendant's wallet would not have been available to the government. Therefore, the evidence should have been suppressed as the fruit of an illegal arrest. Wong Sun v. United States, 371 U.S. 471 (1963).

Finally, for the reasons stated in the Petition for Writ of Certiorari, and in

accordance with the finding of the court of appeals, the local officers did not have probable cause to arrest petitioner when they arrived at the laboratory. (See Pet. App. A18). Petitioner relies on his prior argument in this regard.

CONCLUSION

The petition for writ of certiorari should be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that three copies of the foregoing Reply Brief have been served by United States Mail this 20th day of December, 1985, upon the Office of the United States Solicitor General, 10th and Constitution Avenue, N.W., Washington, D.C. 20530, and a copy upon William Harris, Assistant United States Attorney, 155 South Miami Avenue, Miami, Florida 33130.

Leon E. Sharpe

LEON E. SHARPE, ESQUIRE